

In the Matter of Merchant Mariner's Document No. Z-209847 and all
other Seaman Documents
Issued to: ERNEST M. MICKLES

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1333

ERNEST M. MICKLES

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 9 June 1961, an Examiner of the United States Coast Guard at New Orleans, Louisiana revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as chief cook on board the United States SS ZOELLA LYKES under authority of the document above described, on 5 June 1961, Appellant assaulted and battered pantryman Jordan with a knife.

At the hearing, Appellant voluntarily elected to act as his own counsel. Appellant entered a plea of not guilty to the charge and specification.

The Investigating Officer introduced in evidence the testimony of Jordan and two other witnesses.

Appellant and one other witness testified in defense. Appellant stated that he walked out of the galley to get away from messman Powell who was calling Appellant names; Appellant did not know where Jordan was when Appellant left the galley; Appellant handed the knife he was carrying to another person when Appellant met Jordan at the icebox; Jordan grabbed Appellant by the collar and then he was grabbed by Powell; Appellant got away and reported to the Master.

After considering the evidence, the Examiner rendered the decision in which he concluded that the charge and specification had been proved.

FINDINGS OF FACT

On 5 June 1961, Appellant was serving as chief cook on board the United States SS ZOELLA LYKES and acting under authority of his document while the ship was in the port of New Orleans, Louisiana.

After an argument between Appellant and pantryman Jordan on this date, the latter left Appellant in the galley. A short time later, there was an exchange of foul language between the two seamen when Jordan passed the galley door on the way to the refrigeration room. Appellant left the galley with the large knife he had been using to carve meat. Appellant approached Jordan at the refrigeration room, grabbed him with Appellant's free hand and turned Jordan around. Jordan shouted for help and threw up an arm to protect himself from the knife held by Appellant. When Jordan did this, his wrist was cut by the knife and it was knocked upward causing the point of the blade to scratch Jordan's cheek.

In the meanwhile, messman Powell saw Appellant leave the galley and Powell followed in order to protect Jordan. Powell pushed Appellant to the deck away from Jordan. At some point, Appellant was cut on the face.

Appellant's prior record consists of a probationary suspension in 1949 for creating a disturbance and related offenses; an admonition in 1957 for threatening bodily harm to a fellow crew member.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. Appellant reiterates his testimony and contends that it is obvious Appellant did not intend to assault Jordan with the knife or there would have been clear and unmistakable evidence of that fact. Appellant understands that he handed the knife to a shipyard worker but has not been able to locate this man.

The order imposes undue hardship on Appellant even if Jordan's testimony is considered to be true.

APPEARANCE: D. R. Coley, Jr., Esquire,
 of Mobile, Alabama, of
 Counsel.

OPINION

Although there are conflicts on subsidiary issues in the testimony of the three witnesses against Appellant, it is established by the testimony of all three that Appellant left the galley with the carving knife and followed Jordan when he passed the galley door. It is reasonable to reject Appellant's testimony, that he then gave the knife to an unidentified shipyard worker, since he deliberately left the galley with it and because Jordan's injuries are not otherwise satisfactorily accounted for.

The lack of a specific intent to seriously injure Jordan is indicated by the minor nature of his wounds. Nevertheless, it has been proved that Appellant was guilty of assault and battery since the injuries to Jordan were probable consequences of Appellant's reckless handling of a dangerous weapon. There is no explanation as to why Appellant took the large knife with him if he did not intend to use it on Jordan to some extent. The converse side of the position presented by Appellant is that it was fortuitous that the careless use of such a weapon did not result in much more serious injuries.

These considerations discourage and modification of the order despite the personal hardship involved.

ORDER

The order of the Examiner dated at New Orleans, Louisiana, on 9 June 1961, is AFFIRMED.

E. J. Roland
Admiral, United States Coast Guard
Commandant

Signed at Washington, D. C., this 14th day of August 1962.